Supreme Court, U.S.
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No. 95-1155

In the Supreme Court of the United States

OCTOBER TERM, 1995

CHARLES SCHUSTERMAN AND
LYNN N. SCHUSTERMAN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether Section 483 of the Internal Revenue Code, 26 U.S.C. 483, relieves petitioners of gift tax liability that otherwise would be imposed under Section 2512(b), 26 U.S.C. 2512(b), on their below-market installment sale of property to their children.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A16) is reported at 63 F.3d 986. The order and judgment of the district court (Pet. App. A17-A24) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 22, 1995. A petition for rehearing was denied on October 20, 1995 (Pet. App. A25). The petition for a writ of certiorari was filed on January 17, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND REGULATIONS INVOLVED

The relevant portions of Sections 483 (1976) and 2512 of the Internal Revenue Code (26 U.S.C.) and of former Treasury Regulation § 1.483-1 (26 C.F.R.) (1980) are set forth at Pet. App. A26-A36. The relevant portions of Sections 1274(d), 2501 and 7872 of the Internal Revenue Code (26 U.S.C.), Treasury Regulation § 25.2512-8, and current Treasury Regulations §§ 1.483-1 to 1.483-3 (26 C.F.R.) are set forth in the Appendix, *infra*, 1a-4a.

STATEMENT

1. a. In 1980, when the transactions at issue in this case took place, capital gains were taxed at a lower rate than ordinary income, while the interest portion of deferred payments received for the sale of capital was fully taxable as ordinary income. Section 483 of the Internal Revenue Code governs unstated interest in installment sales of property where part or all of the payments are due more than one year after the date of the sale. If no interest rate is stated in such an installment contract, or if the stated interest rate is less than a specified minimum rate (the "test" or "safe harbor" rate), the Internal Revenue Service (IRS) will impute interest to the transaction. 26 U.S.C. 483 (Pet. App. A26-A27). Thus, where a contract contains unstated interest, Section 483 allows the IRS to recharacterize a portion of the deferred payments due under the contract as interest rather than as capital gain, and to tax the interest portion as ordinary income.

The Department of the Treasury's regulations implementing Section 483 set forth the minimum interest rates necessary to avoid the imputation of interest. As effective during September, 1980, the regula-

tions provided that no interest would be imputed in a transaction that provided for the payment of interest at a rate of six percent or greater. 26 C.F.R. 1.483-1(d)(1)(ii)(B) (1980) (Pet. App. A35). If the transaction provided for payment of interest at less than six percent, the IRS would impute a seven percent interest rate. 26 C.F.R. 1.483-1(c)(2)(ii)(B) (1980) (Pet. App. A34).

Congress enacted Section 483 in 1964 to curb a specific abuse under the income tax laws. Before Section 483 was enacted, if the parties to a contract for the sale of a capital asset on an installment basis did not expressly provide for the payment of interest on the deferred payments, the seller, reporting her or his gain under the installment method, could treat the entire amount received (to the extent it exceeded the seller's adjusted basis in the property) as capital gain, even though some of that amount in reality represented interest income on the deferred payments of principal. In this manner, interest income was hidden as capital gain, and taxed at lower rates. Congress enacted Section 483 to prevent that specific manipulation of the income tax laws. S. Rep. No. 830, 88th Cong., 2d Sess. 102 (1964); H.R. Rep. No. 749, 88th Cong., 1st Sess. 72 (1963). (To the extent, however, that market interest rates exceeded the six percent test rate specified in the regulation, the seller who reported only a six percent interest rate still enjoyed a limited tax saving on the interest on the deferred payments.)

b. Installment contracts may also effectuate gifts, on which gift tax may be due. The Code imposes a tax on any "transfer of property by gift" made by an individual during the calendar quarter. 26 U.S.C. 2501 (App., *infra*, 1a). The value of a gift is determined as

of the date of the gift. 26 U.S.C. 2512(a) (Pet. App. A29). When property is transferred for less than full consideration, "the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift," and is thus subject to gift tax. 26 U.S.C. 2512(b) (Pet. App. A29). The applicable regulations specify that transfers reached by the gift tax include "sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor exceeds the value in money or money's worth of the consideration given therefor." 26 C.F.R. 25.2512-8 (App., *infra*, 4a). See, generally, *Commissioner* v. *Wemyss*, 324 U.S. 303, 306 (1945). When a gift includes interest foregone (*i.e.* when it is effectuated through a below-market loan or a sale with deferred payments at below-market interest rates), the value of the gift is determined by reference to market interest rates.

c. As part of broad tax reform legislation in 1984, Congress added Section 1274(d) to the Internal Revenue Code. Tax Reform Act of 1984, Pub. L. No. 98-369, §§ 41(a), 172(a), 98 Stat. 531, 540, 699. Section 1274(d) adopted an adjustable, market-based interest rate—referred to as the Applicable Federal Rate, or AFR—for use as, *inter alia*, the test rate under Section 483 for determining when installment sales contain unstated interest, see 26 C.F.R. 1.483-1(a), 1.483-2, 1.483-3(a) (effective April 4, 1994) (App., *infra*, 2a-3a), and for use in valuation of debt instruments issued in exchange for property, 26 U.S.C. 1274(b)(2)(B).[1]

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[1] There are three Applicable Federal Rates: a short-term rate for obligations maturing in three years or less from the

2. On September 21, 1980, petitioners transferred 420 shares of Tilco, Inc., Class B common stock to five irrevocable trusts of which the beneficiaries were their descendants. Pet. App. A2, A17. The fair market value of the stock at the time of the transfers was $7,956,046.60. *Ibid.* The trustees of the trusts issued promissory notes to petitioners with a stated aggregate principal amount of $7,956,046.60. *Ibid.* The notes were payable over terms of up to 20 years, at a stated annual interest rate of six percent. *Id.* at A2, A18. Petitioners and the trustees chose to have the notes bear interest at the rate of six percent because that was the "safe harbor" or "test" rate under Section 483 when the notes were issued. *Id.* at A2.

The IRS examined the transfers of stock between petitioners and the trusts and determined that petitioners had made taxable gifts to the trusts on which they owed gift taxes. Pet. App. A2. In making that determination, the IRS did not challenge the parties' valuation of the Tilco stock at $7,954,046.60, but observed that the current fair market value of the promissory notes paid in exchange for the stock was substantially less than the stock. The IRS informed petitioners that their use of the test rate under Section 483 and Treasury Regulation § 1.483-1(d)(1)(ii)(B) (1980) did not preclude valuation of the payments due under the promissory notes in accordance with the

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issue date, a mid-term rate applied to obligations with terms of more than three but not more than nine years and a long-term rate for obligations maturing more than nine years from issue. The AFRs are determined and published by the IRS monthly and are based on the "average market yield" on outstanding marketable obligations of the United States with maturity dates falling within the three ranges. See 26 U.S.C. 1274(d) (App., *infra*, 1a-2a).

prevailing market interest rate, which the parties stipulated to be 11.5 percent. Pet. App. A2-A3. Discounting the value of the payments due under the promissory notes by 11.5 percent over their 20-year terms revealed their present value to be $4,601,551. *Id.* at A3. The IRS determined that the $3,352,489 by which the value of the stock exceeded the present fair market value of the notes petitioners received in exchange constituted taxable gifts by petitioners to the trusts. *Id.* at A3.

Petitioners each filed gift tax returns and each paid gift taxes of $528,043.61 for the quarter ended September 30, 1980, and assessed interest of $578,563.86. Pet. 5; Pet. App. A19. They filed timely claims for refund of the gift taxes and assessed interest paid, together with statutory interest. Pet. App. A3. The IRS disallowed the refund claims, and petitioners sued in district court. *Ibid.*

3. On cross-motions for summary judgment, the district court granted judgment in favor of the government. Pet. App. A17-A24. The court rejected petitioner's "broad application of § 483," and instead followed *Krabbenhoft* v. *Commissioner*, 939 F.2d 529, 532 (8th Cir. 1991), cert. denied, 502 U.S. 1072 (1992), which held that Section 483 is concerned only with the characterization of a payment as principal or interest—an issue that does not affect its actual fair market value for gift tax purposes. The district court concluded that, although Section 483 applies "[f]or purposes of this title," *i.e.*, for purposes of the entire Internal Revenue Code, characterization of amounts

paid as interest or principal "is irrelevant to a 26 U.S.C. § 2512 valuation of gifts." Pet. App. A23.[2]

4. The court of appeals affirmed. Pet. App. A1-A16. The language of the statute did not, in the court's view, support petitioner's position: "We believe a careful examination of the plain language of the statute reveals Congress' clear intent in enacting § 483. Section 483 insures that a taxpayer does not avoid income taxes by structuring an installment contract to provide only for the payment of principal (taxed as capital gains) without interest (taxed as ordinary income)." *Id.* at A8. Section 483 thus determines only "whether payments under an installment sales contract contain interest hidden as principal." *Id.* at A13.

The court noted that Sections 2501 and 2512, in contrast, deal not with imputation of interest, but with valuation and taxation of gifts. Those Sections authorize the IRS to "impose a gift tax when the value of property transferred by a taxpayer exceeds the present value of a promissory note that bears a below market interest rate." Pet. App. A9. The court stated that "the safe harbor interest rate referenced in I.R.C. § 483(c)(1)(B) and specified in Treas. Reg. § 1.483-1(d)(1)(ii)(B) is irrelevant to gift tax valuation under I.R.C. § 2512." Pet. App. A13. "[A]lthough the safe harbor rate insulates a taxpayer from the adverse income tax effects of § 483(a), we find nothing in § 483 that indicates that the safe harbor rate insu-

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[2] The district court declined to follow *Ballard* v. *Commissioner*, 854 F.2d 185 (7th Cir. 1988), which relied principally on the phrase "[f]or purposes of this title." Acknowledging that "§ 483 indisputably applies to the entire Code," the district court believed that reasoning "begs the question" of "how should it apply." Pet. App. A22.

lates a taxpayer from the adverse gift tax effects of § 2512." *Id.* at A14.

The court accordingly concluded that, under Section 483, the promissory notes petitioners received "do not contain interest hidden as principal." Pet. App. A15. "Because the notes bore interest below the market rate," however, petitioners "made a gift to the trusts consisting of the difference between the value of the stock and the present discounted value of the promissory notes." *Id.* at A15-A16. The court held that, "although the promissory notes bore interest at the § 483 safe harbor rate, the IRS was entitled under § 2512 to determine the discounted present value of the notes using the prevailing market interest rate." *Id.* at A16.

ARGUMENT

Certiorari should be denied because the decision of the court of appeals is correct, and what minimal practical impact the question may have had has been eliminated by the Tax Reform Act of 1984, Pub. L. No. 98-369, § 41(a), 98 Stat. 531, 540, and current Treasury Regulations implementing the 1984 Act. In the 32 years that have elapsed since Section 483 was enacted, the question presented here has arisen in only three other reported cases. This Court denied certiorari in *Krabbenhoft* v. *Commissioner*, 939 F.2d 529, 532 (8th Cir. 1991), cert. denied, 502 U.S. 1072 (1992), notwithstanding that that decision, like the court of appeals' decision in this case, conflicted with *Ballard* v. *Commissioner*, 854 F.2d 185 (7th Cir. 1988).[3] Those cases, like this one, dealt with pre-1984

[3] See also *Frazee* v. *Commissioner*, 98 T.C. 994 (1992) (following *Krabbenhoft*).

transactions. The 1984 Act has since removed any lingering doubt about the correct application of these statutes by adding Section 1274(d) to the Code, which ties to market interest rates the test rate of interest to be used for purposes of income taxation on installment sales, thus conforming those rates to the interest rates applicable to valuation under 26 U.S.C. 2512 of gifts effectuated by installment sales.

1. a. The court of appeals correctly held that Section 483 had no role in determining for gift tax purposes under Section 2512(b) the value of the installment payments petitioners received in exchange for their stock. Petitioners made a taxable gift of approximately $3.3 million when they transferred to the trusts stock with a fair market value of $7,954,046.60 in exchange for notes with an aggregate fair market value of only $4,601,551.

It has long been settled that, in order to determine whether a transfer of property has effected a gift, the value of any note issued as complete or partial consideration for the transfer must be taken into account at its fair market value, not at its face value. *E.g.*, *Blackburn* v. *Commissioner*, 20 T.C. 204 (1953); *Estate of Berkman* v. *Commissioner*, 38 T.C.M. (CCH) 183 (1979); cf. *Mason* v. *United States*, 513 F.2d 25 (7th Cir. 1975). Fair market value is a function of the market interest rate, the date of maturity of the instrument, and other pertinent factors such as security for the obligation and the solvency of the debtor. *Blackburn*, 20 T.C. at 207; *Estate of Berkman*, 38 T.C.M. (CCH) at 187. The IRS thus correctly relied on the 11.5 percent prevailing market interest rate at the time of the transfers to determine the value of petitioners' gifts under Section 2512(b).

In arguing that the IRS should have used the Section 483 test rate, rather than the market interest rate, in determining the current fair market value of the installment payments under their contract, petitioners rely principally on the language in Section 483(a) stating that its provisions are applicable "[f]or purposes of this title." Pet. 9-13. They reason that because the term "title" refers to the entire Internal Revenue Code, which includes, *inter alia*, subtitle A (income taxes) as well as subtitle B (estate and gift taxes), the Section 483 test rate applies to gift tax valuations as well as income tax assessment. Pet. 10-11. Petitioners read Section 483 to provide that a bargain sale using the Section 483 test rate is thereby immune from the provisions of Section 2512 that impose a gift tax on bargain sales of property. Pet. 15; see also *Ballard* v. *Commissioner*, 854 F.2d at 188.

Where interest is unstated in a deferred-payment contract, Section 483 determines the portion of sales proceeds that is to be recharacterized as interest. As the court of appeals correctly held, Pet App. A16, however, that provision is not relevant for gift valuation purposes. Rather, valuation focuses on the current fair market value of the deferred installment payments. Determining current fair market value depends on the actual market interest rate that the trusts would have paid in order to defer payments for the stock. To the extent that the Section 483 test rate was not, at the time of the sales at issue here, the actual market rate, the test rate is inapplicable to the gift valuation question.[4]

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[4] Petitioners seek to rely on proposed regulations that the Treasury Department released in 1986, which took the position that Section 483 would be relevant in determining the value of

b. Contrary to petitioners' contention (Pet. 16-19), the court of appeals' decision does not impose on petitioners inconsistent treatment under the income tax laws and the gift tax laws. First, because petitioners specified a six percent interest rate, no recharacterization of principal amounts was called for and that aspect of Section 483 by its terms simply did not apply to their transactions. It followed that those transactions were subject to the same gift and income tax consequences that obtained with respect to all similar bargain sales transactions made prior to 1964, when Section 483 was adopted. Second, although Section 483 prevented petitioners from understating the portion of payments they received that constituted interest, it did so only up to a point. The parties stipulated that, when the transactions at issue took place, the relevant market interest rate (11.5 percent) exceeded the six percent test rate. The effect of the Section

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a below-market debt instrument for gift tax purposes. Pet. 13-14. Because those proposed regulations were never adopted, they are without legal significance. Moreover, as the Tax Court has noted, the IRS in 1986 took inconsistent positions as to whether Section 483 had any relevance for gift tax purposes. *Frazee* v. *Commissioner*, 98 T.C. 554, 581-582 (1992). While the proposed regulations suggested that Section 483 is relevant to valuation for purposes of the gift tax, an IRS General Counsel Memorandum (G.C.M. 39,566 (Oct. 23, 1986)) took the contrary position that Section 483 and the regulations thereunder have no relevance for gift tax purposes. The IRS's litigating position consistently has been that expressed in the General Counsel Memorandum. In any event, those regulations, proposed in 1986, would not have applied to petitioners' 1980 sales, and have since been superseded by 26 U.S.C. 1274(d) and Treasury Regulations §§ 1.483-1 to 1.483-3, adopting the Applicable Federal Rate as the Section 483 test rate. See page 8, *supra*, and pages 13-14, *infra*.

483 test rate was to limit but not eliminate petitioners' income tax advantage by allowing them to characterize more of the installment payments they received as principal than they would have been able to had interest been required to be reported at market rates. The fact that Section 483 did not also give petitioners an advantage with respect to gift tax, however, is not an inconsistency, but a reflection of the limited role of the six percent test rate.

Contrary to petitioners' suggestion, they were not required for income tax purposes to treat the amount realized on the sale as the $7,956,046.60 face amount of the notes rather than as the $4,601,551 fair market value used by the IRS in determining their gift tax liability. For income tax purposes, the taxpayer who makes a bargain sale of property realizes taxable gain to the extent the value of the consideration received exceeds his or her basis in the property sold. See 26 U.S.C. 1001. Under the express terms of Section 1001(b), the amount that petitioners realized on their bargain sale of the stock was the $4,601,551 fair market value of the notes they received from the trusts, not the $7,956,046.60 face amount of the notes. Thus, if petitioners had reported the transaction under Section 1001, their gain would have been computed under Section 1001(b) and would have been equal to the amount by which the fair market value of the notes they received exceeded their basis in the stock they transferred to the trusts.

Petitioners, however, chose to report their gain by the installment method under Section 453. By electing that method of reporting, petitioners became entitled to report the gain on a pro rata basis over the years as they received the payments on the notes from the trusts, rather than having to report the

entire gain (and pay the entire tax due thereon) in the year of the sale, as would have been required under Section 1001. In electing installment reporting under Section 453, however, petitioners were required to treat the full face amount of the notes issued by the trusts as the amount realized on the sale. It was thus petitioners' choice to defer payment of the tax under Section 453 that required them for income tax purposes to treat the amount realized on the sales as the face amount of the notes, while for gift tax purposes the notes were taken into account at their fair market value.

2. The issue presented in this case has little continuing significance to the administration of the tax laws due to the enactment of Section 1274(d) of the Internal Revenue Code in the Tax Reform Act of 1984, Pub. L. No. 98-369, § 41(a), 98 Stat. 531, 540. The inconsistency that petitioners claim the court of appeals' decision tolerates—between treatment of interest for income tax and for gift tax purposes—has been eliminated by the adoption of the market-based Applicable Federal Rate (AFR). Treasury regulations specify the AFR as the test rate under Section 483. 26 C.F.R. 1.483-1(a), 1.483-2(a)(1)(i), (2), 1.483-3(a); cf. 26 U.S.C. 7872(e)(1) (employing the AFR as the rate at which "foregone interest" will be valued in interest-free or below-market loans). The AFR thus replaces the six percent test rate for purposes of imputation of interest. The AFR is adjusted monthly. 26 U.S.C. 1274(d)(1)(B). That rate is also the market rate the IRS uses for purposes of determining the present value of installments due in an installment sale. See 26 U.S.C. 1274(b)(2)(B). Thus, if the AFR is used as the interest rate in an installment sale, there

will be no gift under Section 2512(b) effectuated by use of below-market interest rates.

Petitioners urge that, where the six percent test rate was used for purposes of determining whether an installment sale contains unstated interest, it also should be used to calculate current market value for gift tax purposes. That below-market test rate, however, no longer applies. Instead, a market-based rate applies for purposes of determining unstated interest in installment sales and for purposes of determining the present value of gifts effectuated by installment sales. The question presented in this case is thus of little continuing importance and does not warrant this Court's review.[5]

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[5] Petitioners also erroneously assert (Pet. 19-23) that the court of appeals' decision "subverts the will of Congress" with respect to intra-family sales under Section 483(e) (formerly 483(g)). Section 483(e), unlike Section 483(a)-(c), does not use the new market-based AFR, but uses a ceiling test rate of 6 percent. See 26 U.S.C. 1274(c)(3)(F); 26 C.F.R. 1.483-3(b)(1). Section 483(e) is not at issue in this case, however, because petitioners' transactions did not involve land, and this case is thus not an appropriate vehicle for review of Section 483(e). In any event, there is no reason to believe that the test rate applicable under Section 483(e), any more than the Section 483(a) test rate petitioners used, was intended to be used for gift valuation purposes. See pages 9-13, *supra*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1996

APPENDIX

1. Section 1274 of Title 26, United States Code, as added by § 41(a) of the Tax Reform Act of 1984, Pub. L. No. 98-369, 98 Stat. 531, provides in pertinent part:

26 U.S.C. 1274. Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

* * * * *

(d) Determination of applicable Federal rate

For purposes of this section—

(1) Applicable federal rate

(A) In general

In the case of a debt instrument with a term of:	The applicable Federal rate is:
Not over 3 years	The Federal short-term rate.
Over 3 years but not over 9 years	The Federal mid-term rate.
Over 9 years	The Federal long-term rate.

(B) Determination of rates

During each calendar month, the Secretary shall determine the Federal short-term rate, mid-term rate, and long-term rate which shall apply during the following calendar month.

(C) Federal rate for any calendar month

For purposes of this paragraph—

(i) Federal short-term rate

The Federal short-term rate shall be the rate determined by the Secretary based on the average market yield (during any 1-month period selected by the Secretary and ending in the calendar month in which the determination is made) on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less.

(ii) Federal mid-term and long-term rates

The Federal mid-term and long-term rate shall be determined in accordance with the principles of clause (i).

* * * * *

2. Section 2501 of Title 26, United States Code, provides in pertinent part:

26 U.S.C. 2501. Imposition of tax

(a) Taxable transfers

(1) General rule

A tax, computed as provided in section 2502, is hereby imposed for each calendar quarter on the transfer of property by gift during such calendar quarter by any individual, resident or nonresident.

* * * * *

3. Section 1.483-1 of Title 26, Code of Federal Regulations (1995), provides in pertinent part:

§ 1.483-1 Interest on certain deferred payments.

(a) *Amount constituting interest in certain deferred payment transactions*—(1) *In general.* Except as provided in paragraph (c) of this section, section 483 applies to a contract for the sale or exchange of property if the contract provides for one or more payments due more than 1 year after the date of the sale or exchange, and the contract does not provide for adequate stated interest. In general, a contract has adequate stated interest if the contract provides for a stated rate of interest that is at least equal to the test rate (determined under §1.483-3) and the interest is paid or compounded at least annually.

* * * * *

(2) *Treatment of contracts to which section 483 applies—(i) Treatment of unstated interest.* If section 483 applies to a contract, unstated interest under the contract is treated as interest for tax purposes. Thus, for example, unstated interest is not treated as part of the amount realized from the sale or exchange of property (in the case of the seller), and is not included in the purchaser's basis in the property acquired in the sale or exchange.

* * * * *

4. Section 1.483-2 of Title 26, Code of Federal Regulations (1995), provides in pertinent part:

§ 1.483-2 Unstated interest.

(a) *In general*—(1) *Adequate stated interest.* For purposes of section 483, a contract has unstated

interest if the contract does not provide for adequate stated interest. A contract does not provide for adequate stated interest if the sum of the deferred payments exceeds—

(i) The sum of the present values of the deferred payments and the present values of any stated interest payments due under the contract; or

(ii) If the case of a cash method debt instrument (within the meaning of section 1274A(c)(2)) received in exchange for property in a potentially abusive situation (as defined in §1.1274-3), the fair market value of the property reduced by the fair market value of any consideration other than the debt instrument, and reduced by the sum of all principal payments that are not deferred payments.

(2) *Amount of unstated interest.* For purposes of section 483, unstated interest means an amount equal to the excess of the sum of the deferred payments over the amount described in paragraph (a)(1)(i) or (a)(1)(ii) of this section, whichever is applicable.

* * * * *

5. Section 1.483-3 of Title 26, Code of Federal Regulations (1995), provides in pertinent part:

§ 1.483-3 Test rate of interest applicable to a contract.

(a) *General rule.* For purposes of section 483, the test rate of interest for a contract is the same as the test rate that would apply under §1.1274-4 if the contract were a debt instrument. Paragraph (b) of this section, however, provides for a lower test rate in the case of certain sales or exchanges of land between related individuals.

(b) *Lower rate for certain sales or exchanges of land between related individuals*—(1) *Test rate.* In the case of a qualified sale or exchange of land between related individuals (described in section 483(e)), the test rate is not greater than 6 percent, compounded semiannually, or an equivalent rate based on an appropriate compounding period.

* * * * *

6. Section 25.2512-8 of Title 26, Code of Federal Regulations (1995), provides in pertinent part:

§ 25.2512-8 Transfers for insufficient consideration.

Transfers reached by the gift tax are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor exceeds the value in money or money's worth of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. * * *